

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY

and

Case 28-CA-150157

**BAKERY, CONFECTIONERY, TOBACCO
WORKERS' AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL
UNION NO. 232, AFL-CIO-CLC**

**GENERAL COUNSEL'S OPPOSITION TO
RESPONDENT'S MOTION TO POSTPONE HEARING**

Counsel for the General Counsel (CGC) respectfully opposes Respondent's third Motion to Postpone the hearing in this matter (the Motion), in which Respondent seeks a postponement of the hearing, which is currently scheduled to commence on September 8, until September 15, 2015.

This case involves allegations that Respondent engaged in numerous unfair labor practices within the meaning of Sections 8(a)(1) and (3) of the National Labor Relations Act (the Act) during a union organizing campaign, including interrogating employees, engaging in surveillance, threatening employees, promulgating and maintaining discriminatory rules, promising and granting benefits, discriminatorily discharging one employee, and discriminatorily disciplining another.

In view of the gravity and pervasiveness of the alleged unfair labor practices and their impact on the organizing campaign, the National Labor Relations Board (the Board) has authorized the Regional Director for Region 28 of the Board to petition a federal district

court for interim injunctive relief under Section 10(j) of the Act. CGC anticipates that a petition for such relief will be filed imminently.

Respondent asserts that a postponement is necessary because a rain storm damaged its property, including trailers, vehicles, loading dock doors, roof tops, fencing, windows, power supply, and a generator. Respondent admits, however, that the facility involved in this proceeding was running on backup generators at the time of its motion. Moreover, despite Respondent's claims, CGC has been informed by employees of Respondent that Respondent's operations have been restored.

Notably, Respondent does not argue that there was any damage done to its documents, or records, or its systems for electronically storing information. Furthermore, Respondent has not established that any damage to its facilities will prevent its Counsel or witnesses from appearing in the unfair labor practice hearing if it commences as scheduled. Rather, it appears that additional work associated with responding to damage caused by the storm may pose an inconvenience for some of Respondent's witnesses, who may simultaneously have to engage in storm response activities and trial preparation activities, if Respondent chooses not to designate other individuals to assist with any responsibilities they may have for responding to the storm.

Respondent claims, in particular, that two of its managers who have been assisting with collecting documents sought in a subpoena duces tecum issued at the request of CGC have been diverted from that task to respond to damage caused by the storm. However, Respondent does not specify how many other individuals are also assisting with that task or why other individuals could not be assigned to assist with the task. A national company as large and sophisticated as Respondent presumably would have the resources to call on other

individuals to assist with document collection or storm response in place of the two individuals identified by Respondent.¹

Respondent's assertions do not warrant a postponement. The inconvenience that responding to the storm while also participating in trial preparation activities may cause for some of Respondent's managers is wholly outweighed by the gravity of the allegations against Respondent, which the Board has determined warrant authorization to petition for a Section 10(j) injunction, an extraordinary action that requires a showing that irreparable harm will result absent immediate interim relief. Respondent has long been on notice of the allegations against it, such that scheduling conflicts with trial preparation caused by a storm a week before the scheduled date of the hearing cannot fairly be said to prejudice Respondent. The public interest in obtaining a full and prompt remedy demands that Respondent's Motion be denied.

CGC therefore respectfully requests that the Administrative Law Judge deny Respondent's Motion.

Dated at Phoenix, Arizona, this 3rd day of September 2015.

/s/ Elise F. Oviedo

Elise F. Oviedo, Esq.
Counsel for the General Counsel
National Labor Relations Board, Region 28
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, Nevada 89101-5833
E-mail: Elise.Oviedo@nlrb.gov

¹ Respondent touts on its website that it is the number one milk processor and distributor in the southwest region and that it is one of the largest dairy companies in the entire country.
<https://www.shamrockfoodservice.com/company/Pages/History.aspx>

CERTIFICATE OF SERVICE

I hereby certify that a copy of GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO POSTPONE HEARING in Shamrock Foods Company, Case 28-CA-150157, was served by E-Gov, and E-Filing, email and/or US mail on this 3rd day of September, 2015, on the following:

Via E-Gov & E-Filing:

Honorable Gerald M. Etchingham
Administrative Law Judge
National Labor Relations Board
901 Market Street, Suite 300
San Francisco, CA 94103-1779

Via E-Mail:

Jay Krupin, Attorney at Law
Baker & Hostetler, LLP
1050 Connecticut Avenue NW, Suite 1100
Washington, DC 20036
Email: jkrupin@bakerlaw.com

Nancy Inesta, Attorney at Law
Baker & Hostetler, LLP
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025
Email: ninesta@bakerlaw.com

Todd A. Dawson, Attorney at Law
Baker & Hostetler LLP
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, OH 44114
Email: tdawson@bakerlaw.com

David A. Rosenfeld, Attorney at Law
Weinberg, Roger, & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
Email: drosenfeld@unioncounsel.net

Via U.S. Mail:

Shamrock Foods Company
2228 North Black Canyon Highway
Phoenix, AZ 85009-2791

Bakery, Confectionery, Tobacco Workers' and
Grain Millers International Union, Local
Union No. 232, AFL-CIO-CLC
3117 North 16th Street, Suite 220
Phoenix, AZ 85016-7679

/s/ Elise F. Oviedo

Elise F. Oviedo, Esq.
Counsel for the General Counsel
National Labor Relations Board, Region 28
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, Nevada 89101-5833
E-mail: Elise.Oviedo@nrlrb.gov